

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266-CBS

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
CLAIMS FOR DIRECT PAYMENT

Plaintiff and defendant-in-counterclaim American Manufacturers Mutual Insurance Company ("AMMIC") hereby moves for partial summary judgment, under Fed. R. Civ. P. 56. This motion is based upon the failure of the defendant and plaintiff-in-counterclaim Town of North Brookfield (the "Town") to comply with the Massachusetts statute regarding claims for direct payment to subcontractors on public construction projects, to AMMIC's prejudice.

AMMIC seeks:

(a) with respect to its Amended Complaint for Declaratory Judgment, a partial judgment declaring that the Town's payments to Millis Plumbing Co., Inc., and Greenwood Industries, Inc., of only a portion of their claims for direct payment, and the payment of the \$33,443.55 difference to Sciaba in May 2003, violated Mass. G.L. ch. 30 §39F; that such violation prejudiced AMMIC to the extent of \$33,443.55; and that any amount that AMMIC might otherwise have owed under its performance bond must be reduced by \$33,443.55 on account of the improper payment to Sciaba; and

(b) with respect to its Sixth Affirmative Defense to the Town's Counterclaim (alleging that the plaintiff-in-counterclaim's claim is barred, in whole or in part, because it made payments

to the contractor in violation of Mass. General Laws. c. 30 § 39F), a partial summary judgment that such affirmative defense has merit to the extent of \$33,443.55.

AMMIC submits in further support of this motion its Statement of Undisputed Facts, its Memorandum of Law and the Affidavit of Deborah S. Griffin.

REQUEST FOR HEARING

AMMIC requests a hearing on this Motion.

CERTIFICATION UNDER LOCAL RULE 7.1

The undersigned hereby certifies that counsel have conferred and have attempted in good faith to resolve or narrow the issue presented by this motion.

AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY

By its attorneys

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Dated: December 16, 2005

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